

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CODY DIJKSTRA,

Plaintiff,

v.

I. CAMPOS GARCIA,

Defendant.

Case No. 1:22-cv-00310-EPG (PC)

FINDINGS AND RECOMMENDATIONS,  
RECOMMENDING THAT THIS ACTION  
BE DISMISSED WITHOUT PREJUDICE  
AND THAT PLAINTIFF'S APPLICATION  
TO PROCEED IN FORMA PAUPERIS BE  
DENIED AS MOOT

(ECF No. 2)

OBJECTIONS, IF ANY, DUE WITHIN  
FOURTEEN DAYS

ORDER DIRECTING CLERK TO ASSIGN  
DISTRICT JUDGE

Cody Dijkstra ("Plaintiff") is a state prisoner proceeding *pro se* in this in this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed the complaint commencing this action on March 17, 2022. (ECF No. 1). As it appeared that on August 12, 2021, Plaintiff filed a complaint against the same defendant based on identical allegations in Dijkstra v. Campos, E.D. CA, Case No. 1:21-cv-01223 (ECF No. 1), the Court ordered Plaintiff to show cause why this case should not be dismissed as duplicative of Case No. 1:21-cv-01223.

On April 1, 2022, Plaintiff filed his response. (ECF No. 8). Plaintiff states that he was

1 under the impression that he had to re-file Case No. 1:21-cv-01223. Plaintiff states that, if Case  
2 No. 1:21-cv-01223 is still active, Plaintiff wants this case to be dismissed. Plaintiff also states  
3 that he wants to increase the amount of money he demanded to 1.1 million dollars.

4 Case No. 1:21-cv-01223 is still active. Plaintiff filed a First Amended Complaint in that  
5 case (ECF No. 14), and that complaint is awaiting screening. As Plaintiff filed this case based  
6 on the mistaken belief that he was supposed to re-file his complaint, the Court will recommend  
7 that this case be dismissed without prejudice and that Plaintiff's application to proceed *in forma*  
8 *pauperis* be denied.

9 The Court notes that if Plaintiff wants to amend the complaint that he filed in Case No.  
10 1:21-cv-01223, he needs to file a motion for leave to amend in that case, along with a copy of  
11 the proposed amended complaint. As this case was filed in error, it is not the appropriate case  
12 to make such a request.

13 Accordingly, the Court HEREBY RECOMMENDS that:

- 14 1. This action be dismissed without prejudice;
- 15 2. Plaintiff's application to proceed *in forma pauperis* be denied as moot; and
- 16 3. The Clerk of Court be directed to close this case.

17 These findings and recommendations will be submitted to the United States district  
18 judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within  
19 fourteen (14) days after being served with these findings and recommendations, Plaintiff may  
20 file written objections with the Court. The document should be captioned "Objections to  
21 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file  
22 objections within the specified time may result in the waiver of rights on appeal. Wilkerson v.  
23 Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394  
24 (9th Cir. 1991)).

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IT IS SO ORDERED.

/s/ Eric P. Grosz  
UNITED STATES MAGISTRATE JUDGE